

FOR ARGUMENT

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1976

Supreme Court, U. S.
FILED

MAR 13 1977

MICHAEL RODAK, JR., CLERK

Docket Nos. 76-180, 76-183, 76-5123
and 76-5200

J. HENRY SMITH, individually and as administrator of the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, et al.,

Appellants,

(Additional parties listed on next page)

On Appeal from the United States
District Court for the Southern
District of New York

REPLY BRIEF OF NEW YORK CITY APPELLANTS

W. BERNARD RICHLAND,
Corporation Counsel
of the City of New York,
Attorney for New York
City Appellants
Henry Smith et al.,
Municipal Building,
New York, N.Y. 10007.
(212) 566-3322 or 4337

L. KEVIN SHERIDAN,
LEONARD KOERNER,
ELLIOT P. HOFFMAN,
of Counsel.

-against-

ORGANIZATION OF FOSTER FAMILIES FOR
EQUALITY AND REFORM, etc., et al.,
Appelles.

BERNARD SHAPIRO, individually and as
Executive Director of the New York
State Board of Social Welfare, et al.,
Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES FOR
EQUALITY AND REFORM, etc., et al.,
Appellees.

NAOMI RODRIGUEZ, etc., et al.,
Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES
FOR EQUALITY AND REFORM, etc., et al.,
Appellees.

DANIELLE and ERIC GANDY, etc., et al.,
Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES
FOR EQUALITY AND REFORM, etc., et al.,
Appellees.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1976

Docket Nos. 76-180, 76-183, 76-5193
and 76-5200

J. HENRY SMITH, individually and as
Administrator of the NEW YORK
CITY HUMAN RESOURCES ADMINISTRATION,
et al.,

Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES FOR
EQUALITY AND REFORM, etc., et al.,

Appellees.

BERNARD SHAPIRO, individually and
as Executive Director of the New
York State Board of Social Welfare,
et al.,

Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES
FOR EQUALITY AND REFORM, etc.,
et al.,

Appellees.

NAOMI RODRIGUEZ, etc. et al.,

Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES
FOR EQUALITY AND REFORM, etc.,
et al.,

Appellees.

DANIELLE and ERIC GANDY, etc.
et al.,

Appellants,

-against-

ORGANIZATION OF FOSTER FAMILIES
FOR EQUALITY AND REFORM, etc.
et al.,

Appellees.

On Appeal from the United States
District Court for the Southern
District of New York

REPLY BRIEF OF THE NEW YORK CITY APPELLANTS

We incorporate by reference the material
submitted in the reply briefs of the other
appellants. Our reply brief will consist of

of a short comment on a copy of a petition dated February 28, 1977, in a foster care review proceeding which has been filed in the Family Court of the State of New York, pursuant to Section 392 of the New York State Family Court Act, on behalf of Rafael Serrano, a foster child who resided with Mr. and Mrs. Goldberg, named plaintiffs in these actions. This petition is attached to the reply brief as Exhibit A.

The appellees' brief discusses each of the named plaintiffs and their family relationships with their foster children. The discussion of the Goldbergs and the foster child Rafael Serrano appears at p. 14 of the brief. After a discussion of the three families, the appellees' brief states that these families "are representative of foster families whose family relationships are subject to preemptory

termination under the applicable statutes."

The facts alleged in the petition demonstrate that the foster care relationship between the Goldbergs and Rafael is representative at all, does not support the appellees' position. The petition alleges that the child should continue in foster care because

"Rafael is hyperactive with acting out tendencies and poor impulse control. Foster parents are separated. Foster mother took her own child and left Rafael behind. Child was removed from his foster home for placement at a residential treatment center with the concurrence of the foster father.*** "

CONCLUSION

THE ORDER APPEALED FROM SHOULD BE
REVERSED AND A DECLARATION OF CONSTI-
TUTIONALITY DIRECTED IN FAVOR OF THE
CHALLENGED STATUTES AND REGULATION.

March 9, 1977.

Respectfully submitted,

W. BERNARD RICHLAND,
Corporation Counsel of
the City of New York,
Attorney for New York
City Appellants.

L. KEVIN SHERIDAN,
LEONARD KOERNER,
ELLIOT P. HOFFMAN,
of Counsel.

FAMILY COURT OF THE STATE OF NEW YORK - COUNTY OF BRONX

In the Matter of the Review of the Foster Care Status of

RAFAEL SERRANO

Pursuant to Section 392 of the Social Services Law

PETITION
DSS
(Authorized Agency)

Docket No. _____

"2nd Review"

The petitioner herein respectfully alleges upon information and belief that:

1. Petitioner is an authorized agency with offices at 250 Church Street, Borough of Manhattan, City and State of New York.

2. The above-named child is a ~~female~~ male child born on or about 1/3/63. The names of the natural parents of said child and their residence addresses are as follows:
Rafael Serrano - Iris Serrano
1060 Sherman Avenue 933 E. 167th Street
Bronx, New York Bronx, New York

3. Petitioner is charged with the care, custody and guardianship of said child, in that Mother signed the voluntary authorization for placement on 8/31/67, a copy of which is annexed hereto.

4. Said child was placed in the foster care of the person(s)/institution named at the residence address set forth below and has remained in such foster care for a continuous period of at least twenty-four months:

Name of Foster Parent Institution	Address	Period of Foster Care
Mr. Ralph Goldberg	788 Carroll St. Brooklyn, N.Y.	7/11/60-6/10/76
LT. JOSEPH P. KENNEDY, JR.	1770 Stillwell Ave. Bronx, N.Y. 10469	6/10/76-6/24/76
ST. PETER'S SCHOOL	Jacobs Hill, Peekskill, N.Y. 10566	6/24/76-present

5. There are no persons interested in this proceeding other than those hereinbefore specified, except

BROOKLYN BOARDING HOME SERVICES
2 Lafayette Street 11th Floor
New York, N.Y. 10007

6. That it would be in the best interest of the child to continue in foster care because Rafael is hyperactive with acting-out tendencies and poor impulse control. Foster parents are separated. Foster mother took her own child and left Rafael behind. Child was removed from his foster home for placement at a residential treatment center with the concurrence of the foster father. Foster father is continuing visitation. There is no other feasible plan for Rafael at this time but to continue foster care in his present setting where he needs the services and the structured setting provided by the agency.

WHEREFORE, petitioner prays for a review of the foster care status of the child, pursuant to Section 392 of the Social Services Law, and that the Court enter an order of disposition continuing the present foster care of the above-named child and granting such other and further relief as to the Court may seem just and proper.

Agency #801
Term #501-2
BCW #2627371
Docket # K-4424/74

J. HENRY SMITH
HRA Administrator/Commissioner
of the City of New York
BY SIDNEY BRUSKIN
Attorney
SIDNEY BRUSKIN

EXHIBIT A

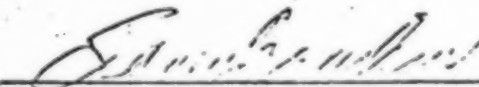
VERIFICATION

SIDNEY BRUSKIN, affirms, under the penalties of perjury:

That (X)he is an attorney duly admitted to practice in the Courts of the State of New York and is employed by the Department of Social Services of the City of New York in the office of the attorney of record for the petitioner herein, and is acquainted with the facts and circumstances of the within action.

That your affirment has read the foregoing petition and knows the contents thereof; that the same is true to (his) ~~own~~ known knowledge except as to those matters therein stated to be alleged on information and belief and as to those matters affirment believes them to be true; said knowledge and belief are based upon the official records and documents of the Department of Social Services of the City of New York kept in the regular course of business, and conversations with caseworkers.

Affirment further states that the reason this verification is made by your affirment and not by the petitioner is that the petitioner is a public officer, being the duly designated Commissioner of Social Services of the City of New York. CPLR § 3020(d)(2).


SIDNEY BRUSKIN

DATED: NEW YORK, New York
February 28, 1977

BEST COPY AVAILABLE

FAMILY COURT OF THE STATE OF NEW YORK - COUNTY OF BRONX

In the Matter of the Review of the Foster Care Status of
RAFAEL SERRANO

Pursuant to Section 392 of the Social Services Law

ORDER DIRECTING SERVICE

OF NOTICE

Docket No. _____

A petition for review of the foster care status of the above-named child pursuant to Section 392 of the Social Services Law having been submitted to this Court and it appearing that notice should be given to the persons hereinafter named, it is

ORDERED, that notice of the presentation of the petition and of the hearing to be held thereon be

given to Rafael Serrano
1060 Sherman Avenue
Bronx, N.Y.

Iris Serrano
933 E. 167th Street
Bronx, N.Y.

ST. PETER'S SCHOOL
Jacobs Hill
Peekskill, N.Y. 10566

Mr. Ralph Goldberg
788 Carroll Street
Brooklyn, N.Y. 11215

Brooklyn Boarding Home Services
2 Lafayette Street
New York, N.Y. 10007
by mail

by service of written notice/upon them within the State of New York at least 10 days before the date set for such hearing.

Signed at _____, New York, this _____ day of _____, 19 _____.

Family Court Judge

NEW YORK

County

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
BUREAU OF CHILD WELFARE

AUTHORIZATION FOR PLACEMENT OF CHILD(REN) IN FOSTER CARE

Case No. sanitary

This is to certify that I, Iris Serrano
residing at 522 E. 135th, Manhattan
am the MOTHER of _____
relationship _____

Name Rafael Jr. Age 4 1/2

and that I authorize the Commissioner of Welfare of The City of New York or his duly authorized representatives to place the said child or children in any duly authorized agency as defined in the Social Welfare Law of the State of New York.

I specifically agree and consent that if the child or children hereinbefore named or any of them, while receiving care in any authorized agency or society for prevention of cruelty to children, is found to be in need of surgical or medical treatment, that such surgical and medical treatment may be administered under the direction of the authorities of the said authorized agency or society for the prevention of cruelty to children without further action on my part, and that such tests or examination as they deem necessary may be given to the said child or children for the purpose of determining the need of the said child or children for medical or surgical care. I further authorize the authorities of any authorized agency or society for the prevention of cruelty to children to give such child or children any treatment, inoculation or vaccination for immunization against contagious diseases as in their judgment may be necessary for the protection of such child's or children's health.

If I do not visit the child or children hereinbefore named while in an authorized agency, as defined in the Social Welfare Law of the State of New York, for a period of twelve successive months or more and do not furnish a reason satisfactory to the Commissioner of Welfare of The City of New York or his duly authorized representatives for my failure to do so, the Commissioner of Welfare of The City of New York, in accordance with the authority vested in him by the Social Welfare Law of the State of New York, the Administrative Code of The City of New York, and the Domestic Relations Law of the State of New York, has the right to and may, if in his judgment it shall be for the best interest of the child or children hereinbefore named so to do, place out through a duly authorized agency the child or children named above in a free family home, with a view to subsequent adoption.

In witness whereof, I hereunto set my hand this 31 day of August, 19 67.

Signed in the presence of

[Signature]
Department of Welfare Representative

x Iris Serrano
Signature of Parent or Guardian

BEST COPY AVAILABLE